S.B. Civil Writ Petition No.2272/06
Neeraj Agarwal Vs. RPSC

Date of Order : 27/03/2006

Hon'ble Mr. Justice Ajay Rastogi

Mr. Manish Bhandari, for petitioner

Instant petition has been filed for seeking direction to the respondent Commission of holding selection for the post of Assistant Professor [Urology] by holding written examination followed with viva voce and the marks should not be exceeded more than 12% to 15%.

The advertisement dt.25th November, 2005 was issued by the Commission whereby the post of Assistant Professor of various disciplines including Urology has been advertised and MCH [Urology] is the minimum qualification for the post in question.

The post of Assistant Professor [Urology] is included in the schedule appended to Rajasthan Medical Service [Collegiate Branch] Rules, 1962 [“Rules of 1962”], which is to be filled by direct recruitment and Part IV of the Rules of 1962 provides procedure for direct recruitment. The selections are made on the basis of interview in

terms of Rule 19 and those who were found suitable by the Commission, their names are arranged in the order of merit and forwarded to the State Government for their appointment in terms of Rule 20 of the Rules.

The petitioner has also submitted his application in pursuant to present advertisement and since it is a selection post to be filled on the basis of interview alone in terms of Rules of 1962, he was called upon to appear for interview on 27/3/06 vide letter dt.16th February, 2006 [Ann.2] and he has been called to submit Degree/mark sheet of his MCH [Urology]/Final Year Examination on the date of interview. This has not been disputed by the counsel that petitioner has appeared in MCH [Urology] Final Year Examination, but his result is still awaited, as such under the present circumstances, even if he has been called upon for interview in terms of Ann.2 dt.16th February, 2006, but in the absence of mark sheet of Final Year Examination/Degree, he will not be permitted to participate in the process of selection.

Shri Manish Bhandari, counsel for petitioner submits that the selection process, which has been conducted by the Commission of making appointment

for the post of Assistant Professor [Urology] only on the basis of interview, is arbitrary and it gives discretion to the Commission in making selection and it is not in consonance with the Rajasthan Medical Service [Collegiate Branch] Rules, 1962. In support of his contention, counsel has placed reliance upon the judgments of apex court in **Ashok Kumar Yadav Vs. State of Haryana [AIR 1987 SC 454]** and **in Inder Parkash Gupta Vs. State of J&K [(2004) 6 SCC 786]**.

Counsel further submits that in terms of advertisement eligibility is looked into on the date of interview, but if fair procedure of holding written examination followed by viva voce as provided in the judgment referred to supra would have been followed by the Commission, certainly arbitrariness could have been ruled out and fair selections will be made which will be as per spirit of Rules of 1962 and so also as per the judgment of apex court which the Commission has not followed despite representation made by the petitioner. Counsel further submits that in some cases the Commission has conducted the screening test for short-listing of the candidates, but for the post in question, no screening test has been held. Such decision of the Commission is wholly arbitrary and violative of Article 14 of the Constitution.

I have considered the submission of the counsel and perused material on record.

This fact remain undisputed that the post of Assistant Professor is included in the schedule appended to the Rules of 1962 to be filled by direct recruitment in terms of Chapter IV and the process of making selection has been initiated under the Rules, 1962 and the Scheme of Rules is not under challenge in the present writ petition and undisputedly condition of eligibility as stipulated, he is not eligible to participate in terms of advertisement in question.

The submission of the counsel that making appointment on the basis of interview is arbitrary in view of judgment of apex court in Ashok Kumar Yadav Vs. State of Haryana [supra], in my opinion, is bereft of merit.

The statutory scheme of Rules provides the post of Assistant Professor to be filled on the basis of interview, the petitioner has failed to question the scheme of rules and apart from it, the judgment of which reference has been made of Ashok Kumar Yadav Vs. State of Haryana [supra] in fact is of no

assistance to him for the reason that it was a case where the written examination followed by viva voce was the procedure of selection and while examining the same, it was observed by the apex court that it is for the expert committee to decide as to what is the procedure to be adopted of making appointment for the post in question and there may be posts where only proper method of selection may be by a viva voce test. Even otherwise, it is for the rule making authority to decide what should be the method which is to be followed in making appointment and the apex court only interfered in the process of selection while allocating of marks in written examination and viva voce laid down by the Commission in making selections, which is not in the instant case.

The next submission made by the counsel that in some cases the Commission considered to hold the screening test, but for the post of Assistant Professor, no screening test has been conducted, in my opinion, also has no substance for the reason that where there are large number of candidates, short-listing is one of the mode which has been approved by the apex court and so also by this court and it is for the Commission to decide in which particular selection screening test is required to

be adopted and such decision of the Commission is in accordance with Clause 7 of the condition of advertisement.

So far as the present case is concerned, since the petitioner is not even qualified on the date when he has been called upon for interview, in my considered opinion, he has no right to question the selection process which the Commission has initiated in pursuant to the present advertisement.

Consequently, the writ petition fails and is hereby dismissed.

[Ajay Rastogi],J.

FRB